IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5248 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRA PARMANAND CHAUHAN
Versus
STATE OF GUJARAT THR' SECRETARY AND OTHERS

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Appearance :
MS KRISHNA U MISHRA for Petitioner.
RULE SERVED for Respondent(s) : 1 - 2.
MR ND GOHIL, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner – detenu has challenged his detention order dated 17.01.2006 by which he is detained as a bootlegger under the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

Along with the order of detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference to two criminal cases pending against the petitioner under the Bombay Prohibition Act. It is alleged that large quantity of country liquor was found from the possession of the petitioner.

Learned advocate for the petitioner submitted that except criminal cases, there is not even a statement of any independent witness for coming to the conclusion that the activities of the petitioner is prejudicial to public order or even tempo of public is disturbed by the said activities. It is submitted that at the most it can be said that the petitioner has violated law and order, and it cannot be said that there is any breach of public order.

Learned advocate further submitted that the petitioner was already arrested and was in judicial custody at the time when the detention order was passed against him. Learned advocate for the petitioner further submitted that though large quantity of liquor was found from the possession of the petitioner, the detaining authority has not given any reasons as to on what basis and material it has come to the conclusion that the petitioner may move an application for bail at any point of time and after being released on bail, he may continue with the same activities. Therefore, order of detention passed against the petitioner is required to be quashed.

In this connection, learned advocate for the petitioner has relied upon a recent decision of the Honourable Supreme Court in the case of **T.V. SRAVANAN vs. STATE** reported in (2006) 2 SCC 664. In the said judgment, the Honourable Supreme Court has held as under in paragraphs 13 and 14:

"13. A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati v. Govt. of NCT of Delhi. This Court noticing the facts of the case observed: (SCC pp. 133-134, para 13).

> ""13. In this case, the detaining authority's satisfaction consisted of two parts – one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that 'bail is normally granted in such cases'. When in fact the five applications filed by the appellant for bail had been rejected by the courts (indicating that this was not a 'normal' case), on what material did the detaining authority conclude that there was 'imminent possibility' that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the 'normal' rule of release on bail had not been followed by the courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. (See in this context Ramesh Yadav v. District Magistrate, Etah, AIR at p. 316).""

14. We are satisfied that for the same reasons the order of detention cannot be upheld in this case. The bail applications moved by the

appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The 'imminent possibility' of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority o n the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, not sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13.12.2005."

It is not in dispute that except pending criminal cases, there is neither any statement of any witnesses nor any documents on the record to suggest that the activities of the petitioner prejudicially affect public health or that by the said activities, the even tempo of public is disturbed. The offence registered against the petitioner is under the Bombay Prohibition Act. In that view of the matter, at the most it can be said that the petitioner has violated law and order, and not public order. Moreover, even though the petitioner is repeatedly found involved in prohibition cases, there is nothing on the record to suggest as to on what basis the detaining authority has come to a conclusion that the petitioner is likely to be granted bail on presentation of the bail application, as if the bail orders are passed in a routine manner by learned Magistrate. There should have been some cogent material on record for coming to

the conclusion that on presentation of bail application, the petitioner will be released. Apart from that, except pending criminal cases there is no credible material for coming to the conclusion that activities of the petitioner are prejudicial to public health. Therefore, this petition is required to be allowed and the order of detention passed against the petitioner is required to be quashed.

At this stage, learned advocate for the petitioner has made a voluntary statement that if the petitioner is granted bail in connection with second case, he will not enter Ahmedabad Commissionerate area upto 31st October, 2006 except for attending criminal cases or for marking present. This voluntary statement is recorded, it is for the concerned authority to monitor the same.

Learned APP may communicate this order to the Police Commissioner, Ahmedabad City, so that he can send it to appropriate police station where the criminal case is pending against the petitioner in order to see that this order is brought to the notice of concerned Magistrate at the time of hearing of bail application of the petitioner in connection with second case.

In the result, the petition is allowed. Order of detention dated 17-1-2006 is quashed and set aside. Petitioner – Mahendra Parmanand Chauhan is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P. B. MAJMUDAR, J.)

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